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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/622,491 | 07/21/2003 | Brian Roberts | 20449-32 | 4988 |

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| EXAMINER |
|---|
| LARSON, JUSTIN MATTHEW |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3782 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/622,491 | ROBERTS, BRIAN | |
| | Examiner | Art Unit | |
| | JUSTIN M. LARSON | 3782 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *11 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *3,17-19,22-24,26,28-33,35 and 37-63* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *3,17-19,22-24,26,28-33,35 and 37-63* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 July 2003* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first end of the at least one cinch strap being fixedly connected to the away-facing panel must be shown or the feature(s) canceled from the claim(s). Currently, the first end of the at least one cinch strap (115) is at best shown to be fixedly connected near the away-facing panel, but not to the panel itself. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 17-19, 37-40, 52, 55, 59, and 63 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the originally filed disclosure is the at least one side cinch strap (115) said or shown to have a first end fixedly connected to said away-facing face (34). At best, the originally filed drawings show a first end of the cinch strap fixedly connected near the away-facing face, but not to the face itself. Examiner feels that this issue is especially important considering Applicant's arguments with respect to Clements regarding the cinch strap of Clements being connected "near" the front and back panels, but not to the panels themselves.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 17-19, 22-24, 26, 28, 30-33, 35, 37-39, 41, 42, 44, 45, 47, 48, 50-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivarson et al. (US 6,474,524 B1) in view of Gausling et al. (US 6,164,509 A), further in view of Clements (US 6,024,265 A), and finally in view of Godshaw (US 6,601,743 B2).

Regarding claims 17, 26, 28, 30, 33, 35, 52, and 54-62, Ivarson et al. disclose a backpack comprising a backpack body, said backpack body having a back-facing face (16), and an away facing face generally opposed to said back-facing face, said backpack body defining at least one storage compartment having a bottom (14), a closure member (32) and a top that is openable by the closure member, wherein said bottom is angled upwards in a direction away from said back-facing face, where said backpack is configured to maintain said bottom generally in said direction when said backpack contains a load therein; and at least one shoulder strap (38) connected to said backpack body and extending between a first end point proximate the top of the backpack body and a second end point proximate the bottom of the backpack body and spaced from the away-facing face, wherein the second end point is adjacent the back-facing face, and wherein said at least one shoulder strap is adapted for mounting said backpack on a wearer; and wherein said backpack body has an away-facing face (24) generally opposed to said back-facing face.

Ivarson et al. fails to disclose a semi-rigid bottom board positioned at said bottom; at least one side cinch strap connected to each of the back-facing and away-facing faces; and at least one shoulder strap cinch strap connected between the backpack body and shoulder strap and extending across the closure member; where

both the side and shoulder strap cinch straps include a separation clip that is separable whereby unobstructed access is provided to the storage compartment that is openable by the closure member when the separation clips are separated.

Regarding the semi-rigid bottom board, Gausling et al. teaches that a rigid bottom on a backpack body provides added support and ergonomic utility to the backpack (col. 7 lines 12-17). Gausling et al. further teaches that this rigidity along the bottom of the backpack body can be provided by inserting a rigid member such as a hard Nylon sheet inside a pocket formed by the bottom panel of the backpack (col. 7 lines 34-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide rigidity along the bottom surface of the Ivarson et al. backpack by implementing a semi-rigid bottom board along the bottom surface, as taught by Gausling et al., in order to provide additional support and ergonomic utility to the backpack.

Regarding the side cinch strap connected to and between the away-facing and back-facing faces for cinching the away-facing face and back-facing faces towards each other, Clements discloses a side cinch strap (25) connected to the back-facing face of the backpack body and proximate the away-facing face of the backpack body for pressing against a load contained within the backpack to control movement of that load (col. 4 lines 38-41). The end of the cinch strap proximate the away-facing face is not connected directly to the away-facing face, but does act through other structure (20) in order to cinch the away-facing face itself. Gausling teaches a similar cinch strap and teaches that an end of the strap is connected directly to the away-facing face of the

backpack body, not needed the additional structure of Clements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a side cinch strap at the sides of the backpack of Ivarson et al., one end of the strap connected to the back-facing face as taught by Clements, and the other attached to the back-facing face as taught by Gausling, in order to better control the movement of the backpack load upon the user, as taught by Clements. Regarding this side cinch strap being positioned over the closure member (32) of Ivarson et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the side cinch strap of the modified Ivarson et al. backpack high enough up the sides of the backpack so as to overlie the closure (32), since such a position is one of a limited number of placement choices, and it would have been within the level of ordinary skill in the art to choose between those limited number of placement choices along the side of the Ivarson et al. backpack.

Regarding the shoulder strap cinch strap extending over the closure member, Gausling et al. teach a strap system where support straps (600) extend from a backpack's shoulder strap over the top of the backpack to an away-facing face of the backpack, the support straps functioning to maintain the shape of the bag and offer further support for the load being carried (col. 9 lines 5-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide support straps on top of the backpack of Ivarson et al., as taught by Gausling et al., in order to help maintain the shape of the bag and to provide more support for the load being carried in the backpack. These straps, when implemented on the backpack of

Ivarson et al. would certainly extend across the closure (32) of Ivarson et al. There is no inventive step in taking a shoulder strap feature from one backpack and implementing that feature on the shoulder strap of another backpack absent a showing of unexpected results.

Regarding the cinch straps having separation clips, the cinch straps that have been added to the Ivarson et al. backpack are not separable and inhibit a user's ability to access the interior of the backpack through the zippered closure (32). Godshaw, however, also discloses a pack and, like Gausling et al., teaches that support straps (50,52) extend over the top of the pack, the support straps serving to maintain the shape of the bag and to provide more support the load being carried in the pack (col. 3 lines 6-13) and the support straps further including separation clips (60) that allow a user to adjust or detach the support straps and access the top panel opening (22). It would have been obvious to one having ordinary skill in the art at the time the invention was made to include separation clips on the side cinch straps and shoulder cinch straps of the modified Ivarson et al. backpack, as taught by Godshaw, so that a user could have easier access to the opening (32) of the backpack. The addition of these separation clips effectively transforms the support straps of the modified Ivarson et al. backpack into adjustable cinch straps.

Regarding claims 18, 23, and 31, Ivarson et al. discloses that the back panel (16) may be reinforced with a layer of material in order to enhance rigidity (col. 2 lines 56-59). Gausling et al., as previously mentioned, teaches that a panel of a backpack may be given rigidity by providing a semi-rigid board on the panel. Therefore, it would have

been obvious to one having ordinary skill in the art at the time the invention was made to position a semi-rigid back board on the back-facing panel of the modified Ivarson et al. backpack in order to enhance the backpack's rigidity for support purposes.

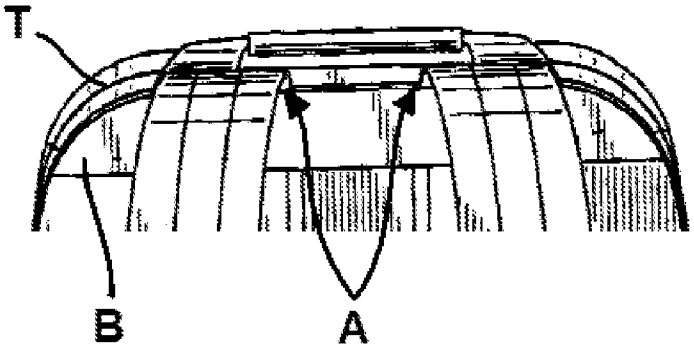
Regarding claims 19 and 32, Ivarson et al. discloses that the back-facing panel may include a cushion material for increased comfort to the user (col. 2 lines 59-61).

Regarding claims 22 and 53, the shoulder strap cinch straps of the modified Ivarson et al. backpack have one end attached to the away-facing face of the backpack and the other end attached to the shoulder straps at a spaced distance from the back-facing face of the backpack, as taught by Gausling et al. The cinch straps are also adjustable, as allowed by the separation clips taught by Godshaw. The remaining limitations in the claim are satisfied by the modified Ivarson et al. backpack as applied to claim 17 above.

Regarding claim 24, the cinch straps of the modified Ivarson et al. backpack as applied to claim 22 above satisfy the claim's limitations.

Regarding claims 37, 41, and 51, the cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al., would have one end connected to the backpack body and one end attached to the shoulder strap wherein the two ends would be on opposite sides of the closure member (32) of Ivarson et al.

Regarding claims 38, 42, 44, 48, the back-facing face of the modified Ivarson et al. backpack has a top end (T, figure below) and the shoulder strap is connected to the back-facing face (B, figure below) at a position (A, below) spaced from the top end of the back-facing face.




Regarding claims 39 and 45, the shoulder strap cinch strap of the modified Ivarson et al. backpack has a first end positioned towards the away-facing face, as taught by Gausling et al.

Regarding claims 47 and 50, the claims combine limitations that have already been shown to be unpatentable over the modified Ivarson et al. backpack. The claims further recite the shoulder strap cinch strap having two portions, one connected to the shoulder strap, and one connected to the backpack body, where the two portions are connected to different parts of a quick-release mechanism. The buckled cinch strap of the modified Ivarson et al. backpack, as taught by Gausling et al. and Godshaw, includes two portions, one attached to the shoulder strap and one to the backpack body, as taught by Gausling et al., where the two portions are connected to different parts of a quick-release mechanism, as taught by Godshaw.

Regarding claim 63, the shoulder strap of the modified Ivarson backpack is contoured as claimed, as originally taught by Ivarson. Examiner is of the position that any shoulder strap with a contour will satisfy the limitations of this claim as currently presented. The fact that the claimed shoulder strap remains flat against a user along an

entire length thereof is a function of the size/shape of the user and the manner in which the backpack is worn, features that cannot be structurally claimed.

6. Claims 3 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Shook (US 5,911,348).

Regarding claim 29, the modified Ivarson et al. backpack includes the claimed features except for the back-facing face having at least one air channel defined thereon, wherein said air channel has at least one opening at the periphery of the said back-facing face.

While the modified Ivarson et al. backpack includes padding on the back-facing panel, Shook teaches that it is known in the art to use padding that provides a series of air channels on the back-facing panel between the backpack body and the user's back in order to provide ventilation and comfort along a user's back. It would have been obvious to one having ordinary skill in the art at the time the invention was made to also use padding that provided at least one air-channel on the modified Ivarson et al. backpack, as taught by Shook, in order to provide ventilation along a user's back and help to prevent excessive perspiration and possibly discomfort.

Regarding claim 3, at least one, if not all, of the air channels taught by Shook can be considered to face the spine of a wearer, as they face the user's back in general and the spine is located on the back, and all are certainly sufficiently deep so as to avoid contact with the spine of said wearer when in use, effectively satisfying the limitations of the claim.

7. Claims 40, 43, 46, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in paragraph 5 above in view of Gleason et al. (US 5,975,387 A).

The modified Ivarson et al. backpack includes the claimed features except for the shoulder strap cinch strap having a length adjustment strap positioned in front of the wearer when the wearer is wearing the backpack. Instead, the cinch straps, as taught by Gausling et al., are fixedly attached to a portion (310) of the shoulder strap that is not in front of the wearer. Gleason et al., however, also disclose a backpack having load-distributing cinch straps (54) extending between the pack body and the shoulder straps and teach that the cinch straps can be adjustably attached to the shoulder straps via an adjustment buckle (56). A portion of the cinch strap lies in front of the user so that the users can access the cinch strap to adjust the position of the load on their back (Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the fixed cinch strap attachment of the modified Ivarson et al. backpack with an adjustable attachment, as taught by Gleason et al., so that a user could easily adjust the position of the load on their back by adjusting a portion of the cinch strap located on their front side within easy reach.

***Response to Arguments***

8. Applicant's arguments filed 2/11/09 have been fully considered but they are not persuasive.

Applicant has asserted that panel (14) of Ivarson is a front panel, as disclosed by Ivarson, and is not a bottom panel as claimed. Examiner notes that the front panel (14)

of Ivarson includes all of the structure of the claimed bottom panel and can therefore be labeled a bottom panel as claimed, despite the "front panel" label given by Ivarson.

Applicant has asserted that the backpack of Ivarson has a trapezoidal shape and that by adding the rigid bottom board of Gausling, which is square, this trapezoidal shape would be somehow ruined. Examiner notes that the bottom panel (14) of Ivarson is square and perfectly capable of receiving the square rigid bottom board of Gausling in order to lend the panel support. Examiner notes that the shapes of the bags are irrelevant to the combination. Examiner is of the position that Gausling provides a general teaching that a bottom board can be added to any bag panel, including panels of all shapes and sizes, in order to lend support to that panel.

Applicant has asserted that the straps of Gausling are attached to the top of the Gausling bag in order to maintain the bag's square shape and that such straps would not function properly on the backpack of Ivarson, which is trapezoidal and not square. Examiner notes that the shapes of the bags are irrelevant to the combination. Examiner is of the position the Gausling provides a general teaching that shoulder straps can be secured to the top panel of a bag in order to lend support to the bag and help maintain the bag's shape. One of ordinary skill would realize that such straps could be attached to the top panel of any bag, including bags of all shapes and sizes, in order to lend support to that bag and help maintain that bag's shape. The fact that Gausling happens to disclose a square backpack does not mean that such straps would not function on differently shaped bags when attached to the top panel in a similar manner.

Applicant has provided numerous arguments as to why one of ordinary skill in the art would not secure the shoulder strap cinch straps to the top panel of Ivarson so as to extend across the closure (see paragraph 3 of Arguments). Examiner notes that when secured to the top panel of Ivarson proximate panel 24 and extending across the zipper, such cinch straps would provide some degree of support for any load placed on top of panel 14 or any of the divider panels within the backpack. The fact that such straps would provide any support at all for the carried load would be motivation enough for a person of ordinary skill in the art to place the straps in such a manner on the Ivarson backpack in an attempt to improve the load-bearing characteristics of the backpack.

Applicant has asserted that while one end of the Clements cinch strap is attached to the back-facing face, the other end of the cinch strap is not attached to the away-facing face. As Applicant has pointed out, the second end of the Clements cinch strap is connected to an exterior hoop which in turn moves the away-facing face as the cinch strap is tightened. As noted in paragraph 5 above, Gausling discloses a similar cinch strap where the cinch strap is connected directly to the away-facing face without the use of an external hoop. One of ordinary skill in the art would realize that the cinch straps of both Clements and Gausling serve to cinch the away-facing face of the backpack toward the back-facing face and that the design of Gausling is much simpler. Based on these teachings, one of ordinary skill in the art would realize that a cinch strap could be attached directly to and between the away-facing and back-facing faces of the Ivarson backpack in order to compress the carried load.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN M. LARSON whose telephone number is (571)272-8649. The examiner can normally be reached on Monday-Friday, 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Justin M Larson/
Examiner, Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782